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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,802	07/12/2006	Jon Erik Brennvall	06085	3412
23338 7590 02/24/2009 DENNISON, SCHULTZ & MACDONALD 1727 KING STREET SUITE 105 ALEXANDRIA, VA 22314				
EXAMINER DESAL, NAISHADH N				
ART UNIT 2834		PAPER NUMBER		
MAIL DATE 02/24/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/584,802	<b>Applicant(s)</b> BRENNVALL ET AL.
<b>Examiner</b> NAISHADH N. DESAI	<b>Art Unit</b> 2834

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 15-21 and 27-29.

Claim(s) withdrawn from consideration: 22-26.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Quyen P Leung/  
Supervisory Patent Examiner, Art Unit 2834

Continuation of 11, does NOT place the application in condition for allowance because: Applicants arguments are found to be non persuasive.

Regarding applicant's argument that Barthalon et al does not teach "a closed tubular cylinder having tight end chambers" is not persuasive. Fig 20,231 teaches that the structure has "tight" end chambers. Applicant does not specify how tight the end chambers are to be.

Examiner finds applicant's argument that "appropriate sealing means" are not shown by Barthalon et al to be non persuasive, since one ordinarily skilled in the art would recognise that the device of Barthalon et al has some sort of sealing arrangement, else the pressure obtained in the pressure chamber would not function properly due to leakage and Barthalon et al would not be able to utilize their device for operation at high torque,braking, lifting, propulsion of braking devices, actuating motors giving considerable power (Col 4 II 27-62).

Regarding applicant's argument that "Space 4" is not at all intended to be a gas tight space, examiner would like to respectfully remind applicant that it is not clear by the claim language if applicant refers to the structure to be completely sealed, leakage proof / resistant. Also the structure of Barthalon et al would need to have some sort of sealing otherwise the apparatus due to significant leakage would not be able to perform the functions as Barthalon et al discloses in Col 4 II 27-62.

Regarding applicant's argument that "none of spaces in Barthalone et al shown in Fig 20 are gas-tight" are found to be non persuasive since it is not clear how "tight" the end chambers have to be in order to obtain a "gas-spring". Examiner points to the Applicants Fig 20, space 4 which clearly would have some sort of "pressurization" and space 1 would be capable of functioning as a "gas spring" at part of its movement (when the rod (Fig 20,330) moves up and down at the non-grooved portions (adjacent to element 330 in Fig 20) or protrusion of its structure).

Regarding applicant's arguments that Barthalon et al do not teach "vibratory movement" are found non persuasive. Cols 3-4 II 63-68, 1-5 teaches that "depending on the application, the force applied ...may only cause a small displacement ...such as producing a vibratory movement". Also Col 4 II 29-33,42-44 and I 50 teaches that the invention can be used for percussion, broaching and dredging, among other possible implementations.

Applicant's arguments that Barthalon et al do not teach a "sealed cylinder" are also found to be non persuasive. Examiner finds that a cylinder is claimed (taught by Barthalon et al in Fig 20,231) but the claim limitation "sealed" is not part of the amendments filed 2/11/2009 or 7/09/2008 nor 6/28/06. Regardless, Fig 20 teaches that the structure is "sealed" to some extent else it would not be able to perform the intended implementations efficiently (Col 4 II 29-64).